

**GARY F. FRANKE CO., L.P.A.**

120 EAST FOURTH STREET, SUITE 1040

CINCINNATI, OHIO 45202

TELEPHONE: (513) 564-9222

FACSIMILE: (513) 564 9990

October 7, 2002

EPA Region 5 Records Ctr.



275018

**SENT VIA FACSIMILE** 1-202-616-6584

Annette M. Lang, Esq.  
Environmental Enforcement Section  
U.S. Department of Justice  
P. O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

In re: The Dow Chemical Company, et al.  
v. Clarke Container, Inc., et al.  
Our File No. 32192/1003

Dear Annette:

We are in receipt of your most recent demand set forth in your October 2, 2002 correspondence. Initially, we neither not accept nor give weight to your consistent comments about a "fundamental duty to be fair to others who have settled." Many settling parties have gotten out of this case for substantially less than their fair share. Dick Clarke has made every effort to cooperate with the Allocator, PRPs and U.S. EPA. The Allocator, who by your own conclusion significantly misinterpreted the evidence, did not seem to care about a "fundamental duty of fairness" to the Dick Clarke entities. The PRPs blindly demanded an unconscionable sum of money not based on the actual, credible evidence. No one has asked about a fundamental duty of fairness to the Dick Clarke entities which have paid substantial funds toward defense of this matter. We both know that, barring the government's legal advantages, this case would be virtually impossible to prove.

Your most recent analysis of the testimony provided by Ralph Dent is also misguided. Mr. Dent and all Ford employees are and were well aware of the fact that a Ford truck driver could not and would not reroute waste unless and until said driver received direct instruction from Dispatch. The fact that a Ford driver may have initially attempted to deliver cyanide ash to the Clarke Incinerator and Thomas Clarke refused to accept said waste does not mean that Thomas Clarke directed where the material could, would or should be taken. The testimony is clear, Ford Dispatch directed Ford drivers in the delivery of Ford waste. To attempt to suggest that Thomas Clarke had such authority is not supported by the evidence. As for the alleged additional waste placed on a truck by Clarke, the testimony is that Ford drivers would not deliver someone else's waste. Union drivers do not permit non-union personnel to ride with them.

October 7, 2002  
Annette M. Lang, Esq.  
Environmental Enforcement Section  
U.S. Department of Justice  
Page 2

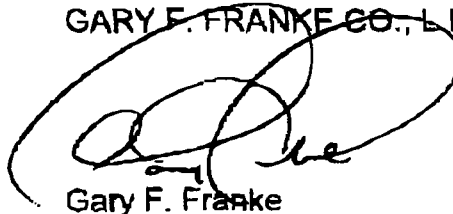
In re: The Dow Chemical Company, et al.  
v. Clarke Container, Inc., et al.  
Our File No. 32192/1003

In a final attempt to resolve this matter without further expense, and taking into consideration all of your assumptions with regard to Dick Clarke entities' delivery to the site (40% premium; your number re: cubic yards delivered; all of the waste being construction and demolition) we hereby offer One Hundred Seven Thousand Seven Hundred Three and 80/100 Dollars (\$107,703.80) to settle this case. The offer includes funds over and above the amount required to account for actual waste delivered by the Dick Clarke entities to the site so as to allow you to attribute a portion to successor liability if you wish. Finally, this settlement offer exceeds the five figure amount repeatedly referenced throughout the settlement negotiations. Please advise.

I look forward to hearing from you.

Very truly yours,

GARY F. FRANKE CO., L.P.A.



Gary F. Franke

GFF:pt

c: Mr. Richard Clarke (via Facsimile)